Crl.A. 421/2001
BEFORE
THE HON'BLE MR JUSTICE P.G.AGARWAL

Heard Mrs. S.D.Barua, learned Amicus Curiae appearing for the appellant and Mr.B.L.Singh, learned P.P.,Assam for the State Respondent.

2. The appellant stands convicted under Section 302 IPC and sentenced him to undergo imprisonment for life and to pay fine of Rs.1000/-, in default, to undergo further imprisonment for two months. The impugned order passed by the learned Sessions Judge, Tinsukia in Sessions Case No.137(T)/95 has been challenged in this appeal.

3. Prosecution case, in brief, is that on 13.10.94 around 5/6 P.M. accused hacked his nephew Rupeswar Gogoi with a dao causing instantaneous death.

4. PW-3 Nomal Gogoi and PW-4 Bhogeswar Gogoi came to the place of occurrence on being reported about the incident and found the deceased with injury and they were reported that the deceased has been killed by the accused Bhim.

5. PW-1 Dr.M.N.Gogoi, who conducted autopsy on the dead body found as follows:

One male dead body of average build, rigormortis present in the body and the whole body was stained with blood.

Injuries:

1) Incised wound in the back of the neck in its middle part of size 9 x 2 cm cutting the 4th cervical vertebrae and spinal cord completely.

2) Incised wound in the left face of 8x1 cm cutting the left maxilla left mandible.

3) 4 nos of incised wound in the back of the body in the thoraxic region upper parts of size 7x1cm, 5x1cm, 6x1cm and 9x1cm - all were muscle deep.

Carnium & Spinal Canel:

Scalp, Skull : Healthy
Vartebrae : 4th cervical vertebrae cut completely.
Membrance : Cut
Brain : Healthy
Spiral cord : Cut completely.

Thorax:

All were healthy. Heart - healthy and empty.

Abdomen:

All were healthy. Stomach contained 2 ounce liquid smell of alcohol found. Bladder- Healthy & empty.

Opinion :

Death was due to shock and haemorrhage that resulted from the ante-mortem injuries caused by heavy sharp weapon. Injuries were homicidal in nature.

6. Medical evidence has not been challenged by way of cross examination and it is not a fact that the death of deceased Bhogeswar is in dispute.

7. In the present case, we find that the impugned order of punishment is based on confession recorded by PW-2 Sri Pratap Kumar Roy, Sub-divisional Judicial Magistrate, Morigaon. Ext.7 is the confessional statement and the relevant portion of the confession reads as follows:-

Around 5.30 P.M. on last Thursday (on 13.10.94), I was cutting bamboo at the enclosed yard of a neighbour. Right at that time Nami, daughter of my elder brother, informed me that Rupeswar Gogoi alias 'Bhai' had been beating my younger sister and mother inside the house. I immediately went home and saw that Rupeswar had been quarreling with my sister and mother. It was around 5.30, then I gave blow in the beck of Rupeswar alias 'Bhai' with the dao in my hand. I hacked him for 5/6 times. I hacked him in different parts of his body. He died immediately. In the morning I went to Dibrugarh. I went to enter the Dibrugarh jail. As it was closed, I went to Dibrugarh Police Station. From there police took me to Digboi.

8. Law is well settled in order to base conviction on confession, t

he prosecution must be able to prove the requirements of voluntariness and truth fulness. We find that the learned Magistrate took adequate caution and recorded the confession on being satisfied that it is being voluntary and that was depose d by PW-2 in his examination. However, PW-2 was not cross-examined. We also find that the accused had admitted making of the confession under Section 313 Cr.P.C ., but he stated that he does not remember as to what he had stated before the M agistrate. There is no allegation that the conviction was procured under coercio n or undue influence.

9. As regards truthfulness of confession, we find that broad facts mentioned by the accused concerned had been supported by oral and medical eviden ce on record. Evidence of PW-1 supports the confession as regards the nature of injury and weapon used. We, therefore, hold that this confession made by the acc used was voluntary and reliable.

10. Law is well settled that a conviction, based confession, has to be fully corroborated by material particulars available from the oral as well as medical evidences on record. In the present case, we find that the accused acte d when he saw the deceased quarreling with his younger sister and mother. Thus, there was a provocation from the deceased that set the accused to assault as suc h. In our view, it is at best case under Section 304 Pt.II IPC. Accordingly, we reduce the sentence to rigorous imprisonment for 10 years and to pay fine of Rs .1000/-, in default, to undergo further imprisonment for 15 days. Period undergo ne shall be set off under Section 428 Cr.P.C. and the accused appellant shall be set at liberty forthwith, if not wanted in connection with any other case.

Send down the record.

Fees of Amicus Curiae is fixed at Rs.3000/- (Rupees three thousa nd only).